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The People's Republic of China's Ability to Comply with the Standards Mandated by the World Trade Organization

I. INTRODUCTION

Since the 15th century, unrestricted access and unhampered utilization of the vast Chinese market has been the Holy Grail for western economies.¹ The acceptance of the People's Republic of China ("PRC" or "China") into the World Trade Organization ("WTO"), which is progressing quickly at the time of this writing, seems to be the last hurdle for American corporations in pursuit of this prize.² However, American corporations will undoubtedly discover, as those did before them, that control of the market will be difficult to obtain.³

This gloomy outlook for American economic prospects in China stems from the almost certain inability of China's central government to enforce WTO standards throughout the country.⁴ As a result of rapid decentralization, Beijing no longer exerts the control it once did over China's twenty-three regional provinces.⁵ While it may be Beijing's wishes that China open itself to foreign trade, it is the local officials who govern these provinces who will need to enforce WTO regulations.⁶

In trying to enforce the WTO standards, these local officials will get little help from the weak central government.⁷ The local officials will be faced with rising unemployment as state run businesses succumb to foreign competition, and they will be faced with the lure of a more lucrative life engaging in local protectionism.⁸

The PRC's inability, or its provincial officials' reluctance, to comply with the standards set by the WTO will place China in direct opposition with WTO

1. See generally Kevin Stemp, *China & the WTO*, at http://www.wcit.org/resources/wto_archives/wto/post_ministerial/wto_student_forum.htm (last visited Sept. 17, 2002).

2. See Greg Mastel, *China and the World Trade Organization: Moving Forward Without Sliding Backward*, at <http://www.newamerica.net/articles/mastel/gm-ILJSpring2000.htm> (last visited Nov. 13, 2000); see also *China to Enter WTO in the Near Term*, at <http://www.cnn.com/2001/WORLD/asiapcf/east/02/27china.wto.delay/index.html> (last visited Feb. 28, 2001).

3. Greg May, *Reality Check: Local Protectionism May Hamper China's WTO Compliance*, at http://www.nixoncenter.org/publications/Reality%20Check/11_18-99ChinaWTO.htm (last visited Nov. 22, 2002).

4. *Id.*

5. *CIA-World Fact Book*, at <http://www.odci.gov/cia/publications/factbook/geos/ch.html> (last visited Nov. 22, 2002); see also *China's Decentralization Loosens Beijing's Control*, at http://www.tibet.ca/wtnarchive/1994/3/9-2_4.html; May, *supra* note 3.

6. See generally May, *supra* note 3.

7. See *China's Decentralization Loosens Beijing's Control*, *supra* note 5; see generally May, *supra* note 3 (stating that China's central government has gone to the opposite extreme in the reform period abdicating much of its authority to local officials).

8. *Id.*

Members, including its major trading partner, the United States.⁹ The result could be WTO sponsored trade sanctions against China, and an irreconcilable strain on Sino-American trade.¹⁰ This Note illustrates the basis for PRC's inability to comply with the regulations set by the WTO. The analysis of the Note is done through a study of the current Chinese political and economic climate, and through an overview of two major WTO agreements on trade. Additional regulations, embodied in other WTO agreements, will undoubtedly be significant in the area of China's compliance with WTO mandates. However, for the purposes of this Note, the focus is on the Agreement of Subsidies & Countervailing Measures and the Agreement on Safeguards.

This Note also discusses two types of solutions the United States can seek in order to protect its trade and influence China's development into a compliant member of the WTO. While one solution is short-term and the other long-term, both allow the United States to develop its vital interest in reaping the full benefits of a free trade agreement with China.¹¹ Part II of this Note provides a brief background of China's recent economic history and its march toward WTO acceptance. It also supplies a brief background on the WTO. In addition, Part II fully discusses the recent economic and political climate in China and applies those factors to two major WTO agreements. By applying these factors to the WTO agreements, this Note will demonstrate how Chinese WTO non-compliance is likely to occur. Part III applies those factors to the agreements for the Chinese auto industry to exemplify China's non-compliance.

Finally, Part IV offers a short-term solution to Chinese non-compliance, by discussing the ways in which the United States can utilize the WTO's dispute resolution procedures.¹² It also provides a long-term solution that calls for a radical restructuring of the Chinese political body and calls for the creation of a joint Sino-American WTO compliance center.

II. CHINA AND WTO COMPLIANCE

A. *Brief Background on China and the WTO*

This Note would wax ambiguity if it proceeded with its discussion of China's compatibility with WTO standards without providing adequate background. Therefore, a brief discussion of the political and economic climate of

9. See generally May, *supra* note 3 (stating that it is Beijing's chronic inability to force its will on localities that is perhaps the greatest challenge facing the WTO accord).

10. *Id.*; see also Sue Ann Mota, *The World Trade Organization: An Analysis of Disputes*, 25 N.C.J. INT'L LAW & COM. REG. 77, 78 (1999).

11. See generally May, *supra* note 3 ("A similar re-centralization will need to occur in the court system and in the regulation of domestic trade if the foreign companies are to reap all the rewards of WTO."); Mota, *supra* note 10, at 78 ("The dispute resolution process under the WTO is particularly innovative, compared to prior processes, and contributes more to global economic stability than does any other aspect in the WTO.").

12. Mota, *supra* note 10, at 77.

the PRC, both now and leading up to WTO accession, and a brief discussion of the WTO framework is warranted.

Ever since European ships first brought direct trade to China in the 15th century, Western industries have relentlessly pursued control of China's vast market.¹³ This pursuit of economic spoils ended in 1949 with the Communist victory.¹⁴ Instilling the communist ideology, China closed down its market and replaced its private companies and private sector employment with state owned enterprises that were strictly controlled by the central government.¹⁵

In the late 1970s, China began to take the painful steps needed to change its failing economy into a free-market system, like those utilized by the successful nations in the western hemisphere.¹⁶ Encouraged by its success in exporting to foreign markets, China sought membership to the General Agreement on Tariff and Trade ("GATT") in the mid-1980s, and later the WTO in the mid-1990s.¹⁷ As in any case in which a country requests to join the WTO, a working group was formed to consider the application.¹⁸ In China's case, the working group included the United States, the European Union, Japan, and Canada.¹⁹

The Final Act of the 1986-1994 Uruguay Round²⁰ of the GATT is generally referred to as the WTO agreements.²¹ It includes, in part, agreements in which individual countries, called "Members," have made binding commitments to reduce or to eliminate specific tariffs and non-tariff barriers to mer-

13. See generally Stemp, *supra* note 1.

14. *Id.* at 1-2.

15. *Id.*

16. *Id.* at 3.

17. *Id.*

18. See Mastel, *supra* note 2.

19. *Id.*

20. *WTO legal texts: A Summary of the Final Act of the Uruguay Round*, at http://www.wto.org/english/docs_e/legal_e/urusm_e.htm (last visited Nov. 11, 2000).

'The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations', signed by ministers in Marrakesh on 15 April 1994 is 550 pages long and contains legal texts which spell out the results of the negotiations since the Round was launched in Punta del Este, Uruguay, in September 1986. In addition to the texts of the Agreements, the Final Act also contains texts of Ministerial Decisions and Declarations which further clarify certain provisions of some agreements. . . . The agreement establishing the [WTO] calls for a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round. Its structure is headed by a Ministerial Conference meeting at least once every two years. A General Council oversees the operation of the agreement and ministerial decisions on a regular basis. This General Council acts as a Dispute Settlement Body and a Trade Policy Review Mechanism, which concern themselves with the full range of trade issues covered by the WTO, and has also established subsidiary bodies such as a Goods Council, a Services Council and a TRIPs Council. The WTO framework ensures a 'signal undertaking approach' to the results of the Uruguay Round.

21. *Id.*

chandise trade.²² Membership in the WTO entails accepting all of the results of the Uruguay Round without exception.²³

The WTO's "most favored nation principal" mandates that all WTO Members receive the same treatment.²⁴ The concessions granted to one WTO Member must be extended to all Members.²⁵ Before a working group completes and sends a country's application to the WTO Council for final approval, the various bilateral understandings the applicant has reached with each Member is fashioned into a single comprehensive multilateral agreement.²⁶ The bilateral understanding between China and the United States was seen as the last hurdle in China's acceptance into the WTO.²⁷ Since it was the United States that expressed the most comprehensive reservations concerning China's membership,²⁸ it therefore seems highly likely that other Members will soon reach agreements with China.²⁹

B. Decentralization and Non-Compliance

China's impressive economic growth over the past decade has led to the decentralization of economic control.³⁰ No longer is the central government the omnipresent overseer of all commercial and economic activities.³¹ Now, much of the decision making process for operations, production, and investment has been delegated to the hundreds and thousands of local officials who govern China's twenty-three provinces.³² This decentralization process has gone to a dangerous extreme and now threatens the PRC's ability to comply with WTO regulations.³³

Experts on the PRC have stated that, "in some areas of economic policy, Beijing can only pretend to rule the provinces, and the provinces only pretend to be ruled by Beijing."³⁴ The result is that China, rather than being one vast market, now seems to be a collection of small markets, each with its own governing official and its own unique trade and investment barriers.³⁵ Beijing,

22. *Id.*

23. *Id.*

24. *Id.*

25. See generally Mastel, *supra* note 2.

26. *Id.* at 2.

27. *Id.*

28. *Id.* at 3. Congress used the most favored nation vote as a way of expressing their dislike with China's policies on things from human rights to arms sales.

29. *Id.*

30. See generally *China's Decentralization Loosens Beijing's Control*, *supra* note 5.

31. *Id.* (stating that Beijing only pretends to rule its provinces in many respects).

32. Stemp, *supra* note 1, at 3; see also *CIA-World Fact Book*, *supra* note 5; May, *supra* note 3.

33. *CIA-World Fact Book*, *supra* note 5.

34. *China's Decentralization Loosens Beijing's Control*, *supra* note 5.

35. May, *supra* note 3.

therefore, will need to ensure that all of these provincial officials comply with the WTO agreements.³⁶

It is Beijing's chronic inability to enforce its will on these localities that is the greatest challenge to China's compliance with WTO agreements.³⁷ For example, Beijing was forced to abandon an economic austerity program soon after its launch, because the central government was unable to impose the program on the provinces.³⁸ This inability to control will be greatly compounded by the fact that many of the WTO regulations will be painful to implement.³⁹

For example, as a result of opening up the economy to foreign trade, many uncompetitive Chinese factories will be shut down. Ten million farmers alone could lose their jobs as superior U.S. sugar and wheat starts flooding into the Chinese market.⁴⁰ Many westerners try to offset this concern by invoking images of the Tiananmen Square movement, and incorrectly assuming that young Chinese men and women will hold up Statute of Liberty figurines and support the government programs that bring them closer to the west.⁴¹ In other words, the west foolishly believes that many Chinese citizens will suffer the immediate hardships, such as unemployment, in order to facilitate a greater and more sustained movement toward capitalistic and democratic values.⁴²

However, this is not the common sentiment of the average Chinese citizen, and is certainly not the predominant attitude held by China's youth.⁴³ As noted by Thomas Friedman, "The most popular political attitude among students in China is nationalism, with an underlying sense that America is keeping them down."⁴⁴ This sense of nationalism may reach its boiling point as China's youth observes foreign industries accumulating massive amounts of wealth with little short-term visible benefit to China.⁴⁵ As a result, many local officials will find that embracing and enforcing Beijing's mandate of WTO compliance is tantamount to political suicide.⁴⁶ Therefore, because of the na-

36. *Id.* (stating that hundreds and thousands of local officials will be responsible for complying with WTO rules on the ground). It is Beijing's chronic inability to force its will on these localities that is its biggest challenge to WTO compliance.

37. *Id.*

38. *China's Decentralization Loosens Beijing's Control*, *supra* note 5.

39. *See generally* May, *supra* note 3 (stating that Opposition to trade liberalization among local officials is understandable since they will have to deal with protests by angry laid-off workers).

40. Thomas L. Friedman, Editorial, *The Five Myths*, N.Y. TIMES, Oct. 27, 2000, at A12.

41. *Id.* (stating that a common myth is that every Chinese youth is building a replica of the Statue of Liberty in his basement).

42. *See generally id.*

43. *Id.*

44. *Id.* at A1.

45. *Id.* (stating the most popular attitude among students in China is nationalism, with an underlying sense that America is keeping them down).

46. *Id.*; *see also* May, *supra* note 3 (stating opposition to trade liberalization among local officials is understandable since it is they, not the top leaders in Beijing, who will have to deal

tionalistic pressures, they will instead embrace the more popular principals of regional protectionism.⁴⁷

Because of decentralization, these local officials now have the ability and the power to effectively engage in local protectionism.⁴⁸ For instance, a local official, fearing that a local business is going to succumb to foreign competition, will begin purchasing local goods over foreign goods in attempt to support the local industry and ward off political unrest.⁴⁹ Such a purchase would violate the Agreement on Subsidies and Countervailing Measures ("SCM").⁵⁰

The SCM is contained in Annex I A., the Multilateral Agreements on Trade in Goods, of the WTO.⁵¹ The SCM prohibits certain subsidies because they violate the spirit of international trade and the free-market system.⁵² They violate the spirit of the free-market system because they allow governments to interfere in the market and determine which industries/enterprises survive, instead of leaving it for the market to determine.⁵³ This market determination is exactly what the Chinese provincial officials are going to try to avoid by subsidizing the failing local industries.⁵⁴

Part I, Article 1⁵⁵ of the SCM contains a definition of subsidy.⁵⁶ A subsidy, as defined, is (1) a *financial contribution* (2) by a government or any

with protests by angry laid-off workers. In that respect, provincial leaders in China are much like the U.S. Congressmen who oppose free-trade agreements.).

47. Friedman, *supra* note 40; *see also* May, *supra* note 3 (stating local governments which run their own business enterprises will try to protect their regional manufacturing, retail, and service markets from outside competition, foreign and Chinese alike).

48. Friedman, *supra* note 40.

49. *Id.*

50. *See* Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Apr. 15, 1994), *available at* http://www.wto.org/english/docs_e/legal_e/24-scm.pdf [hereinafter Final Act]. Specifically, the Agreement on Subsidies and Countervailing Measures [hereinafter SCM Agreement], demonstrates that eleven WTO Members are signatories to the SCM. in part I., art. 3.

51. *Id.* at 13. "The SCM is intended to build on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, which was negotiated in the Tokyo Round of GATT."

52. *See The WTO in brief - 1*, at http://www.wto.org/english/thewt_oe/whatis_e/inbr01e.htm (last visited Nov. 22, 2000).

53. *See id.*

54. *Id.*

55. *See* SCM Agreement, *supra* note 50, at part I, art. 1, which states:

For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)

(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

- (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- (iii) a government provides goods or services other than general infrastructure, or purchases goods;

public body within the territory of a Member, (3) which confers a *benefit*.⁵⁷ All three elements must be satisfied in order for it to be determined that a subsidy existed.⁵⁸ The second element of a subsidy is easily satisfied in the hypothetical above, as the provincial official is a governmental body.

To determine if the first element is satisfied, we look to the agreement's definition of a *financial contribution*.⁵⁹ The SCM lists the circumstances in which a government has conferred a *financial contribution*.⁶⁰ For example, one of such circumstances would be if the governmental body provides goods or services, other than for the general infrastructure, or if the governmental body purchases goods.⁶¹ Pursuant to this definition of *financial contribution*,

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2)

there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

56. *See id.*

57. *Id.*

58. *See WTO legal texts – A Summary of the Final Act of the Uruguay Round, supra* note 20, at 2.

59. *See* SCM Agreement, *supra* note 50, at part I, art. 1.

60. *Id.*

In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as 'certain enterprises') within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

61. *See id.*

if the regional official purchases the goods from the local producer he would have conferred a *financial contribution*.

The question of whether the third element, a *benefit*, exists can be unclear.⁶² For example, the SCM does not provide language explaining when loans and equity infusions would be considered a *benefit*.⁶³ However, the cash grant used to by the provincial officials to pay for the local goods is clearly a *benefit* and would not fall into the areas afforded little guidance under the SCM.⁶⁴ Consequently, the last element is satisfied and a subsidy is determined to exist.

Part I, Article 2 of the SCM, introduces and explains the concept of *specificity*.⁶⁵ This is relevant to our topic of discussion because all of the disciplines set out under the SCM apply to specific subsidies only (*i.e.*, can be challenged/prohibited by the WTO's regulations).⁶⁶ Article 2 provides principals that are to be applied in order to determine whether a subsidy is specific to an industry or enterprise within the jurisdiction of a Member.⁶⁷ One such principal is if a subsidy is limited to certain enterprises located within a designated geographical region within the jurisdiction of a granting authority, then the subsidy is specific.⁶⁸ It is this element of *specificity* that goes to the heart of the principle of regional protectionism and would exist in the hypothetical demonstrated above.⁶⁹ The subsidy would be specific because the governmental official would have conferred the subsidy only on the failing business within the regional province.

Given that not all subsidies are forbidden by the WTO, the SCM goes on to create three main categories of subsidies: those that are prohibited, those that are actionable,⁷⁰ and those that are non-actionable.⁷¹ Actionable subsidies may or may not be a violation of the WTO agreements and non-actionable subsidies cannot be challenged in the WTO's dispute settlement procedures.⁷²

62. See SCM Agreement, *supra* note 50.

63. See *id.*

64. *Id.*

65. *Id.* at part I, art. 2.

66. *Id.* at part I, art. 1. A subsidy as defined in paragraph I is subject to the provisions of Part 3 or 5 only if such a subsidy is specific in accordance with Article II of the SCM.

67. *Id.* at part I, art. 2.

68. See *id.*

Provided these criteria and/or conditions are clearly spelled out in the law, regulations or other official document governing them; Such factors include, use of a subsidy program by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

69. *Id.*; see generally May, *supra* note 3 (stating that provincial officials naturally favor local manufactures).

70. See SCM Agreement, *supra* note 50. Actionable means subject to challenge in the WTO, or may be subject to countervailing measures set under the SCM.

71. See SCM Agreement, *supra* note 50.

72. *Id.*

For purposes of this discussion, we will only look at the first category of subsidies: those that are prohibited, as they clearly violate the WTO agreements by distorting international trade and causing serious injury to other Members.

Part II, Article 3 of the SCM states that two types of subsidies shall be prohibited.⁷³ The first types are subsidies based upon export performance,⁷⁴ and the second are subsidies based upon the use of domestic over imported goods.⁷⁵ It is this last definition of a prohibited subsidy that will become prevalent in China's economy after WTO accession.⁷⁶ Hence, the provincial official who chooses to save his faltering local industry by using government funds to purchase domestic products over a foreign product would have used a prohibited specific subsidy. Therefore, within the understanding of the SCM, China is in violation of a WTO agreement and subject to sanctions.

In addition, a local official may become fearful that a local business is going to succumb to foreign competition and not only subsidize the business, but also enact safeguards to protect the local product.⁷⁷ The enactment of such safeguards is almost certainly a violation of an established WTO agreement, the Agreement on Safeguards ("SG").⁷⁸

The SG⁷⁹ is also contained in Annex I A, the Multilateral Agreements on Trade in Goods, of the WTO.⁸⁰ Section I of the SG states that the agreement establishes rules for the application of safeguard measures.⁸¹ Such measures can consist of import restrictions or an increase on duties to higher than agreed upon rates.⁸² Therefore, the enactment of a safeguard by a local official in and of itself would not be a violation of WTO principals. However, there are strict elements and conditions that must be satisfied before the safeguard can be enacted.⁸³

Article II of SG lays out the conditions under which a Member may apply safeguards.⁸⁴ A Member may apply a safeguard measure to a product only if that Member has determined that such product is being imported into its terri-

73. See SCM Agreement, *supra* note 50, part II, art. 3.

74. *Id.* at part II, art. 3 (subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance).

75. See *id.* (subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic goods over the use of imported goods).

76. See generally May, *supra* note 3 (stating that provincial officials naturally favor local manufacturers).

77. See generally *id.* (stating local governments impose extra fees and taxes).

78. See *id.* and accompanying text note 77; see also Final Act, *supra* note 50, Agreement on Safeguards [hereinafter SG Agreement].

79. See SG Agreement, *supra* note 78, at art. I. The purpose of the SG Agreement is to clarify and reinforce the intent of Article XIX, Emergency Action on Imports of Particular Products of the GATT 1994.

80. See *id.*

81. See SG Agreement, *supra* note 78, at part. I, para. 1.

82. See WTO: Trade Topics; The Agreement on Safeguards, at http://www.wto.org/english/tratop_e/safeg_e/safeint.htm (last visited Nov. 12, 2000).

83. See SG Agreement, *supra* note 78, at art. II.

84. See *id.*

tory in increased quantities.⁸⁵ In addition, the imported product must threaten to cause *serious injury* to the domestic industry that produces directly competitive products.⁸⁶

Article IV of the SG explains that for purposes of the agreement, a *serious injury* shall mean a significant overall impairment in the position of a domestic industry.⁸⁷ Such a threat of *serious injury* shall be understood to mean *serious injury* that is clearly imminent.⁸⁸ The section further states that a domestic industry shall be understood to mean the producers of the like or directly competitive products operating within the territory of a Member.⁸⁹

Article 3 of the SCM states the Member may apply the safeguard only after an investigation by the competent authorities of that Member.⁹⁰ The section also states that reasonable public notice must be given of the investigation and that interested parties must be given the opportunity to present their views and respond to the views of the Member seeking to impose the safeguard measures.⁹¹

The requirement of an investigation poses an obstacle for the PRC in enacting a safeguard. This obstacle arises because, although the importation of foreign goods may indeed constitute a *serious injury* to a domestic industry in China, the SG is predominately designed to protect countries, like the United States, from having their markets flooded with (artificially low priced) products made by cheap labor.⁹² The SG is not designed to offer a remedy from the competition of more efficient products or manufactures.⁹³ For example, massive amounts of extremely cheap Chinese textiles shipped to the United States in such a way that the United States textile industry cannot effectively compete, would cause a *serious injury* and may be actionable under the SG.⁹⁴ Conversely, under the theories of a free-market system, the more efficient foreign product should force out the weaker Chinese domestic prod-

85. *See id.*

86. *See id.*

87. *See* SG Agreement, *supra* note 78, at art. IV.

88. *See id.*

89. *See id.* Or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

90. *See id.* Pursuant to procedures established in Article X of the GATT 1994.

91. *See* SG Agreement, *supra* note 78, at part I, art. II. Interested parties include importers, exporters, or producers.

92. *See generally* Enforcement of the U.S.-China WTO Accession Deal, at http://www.whitehouse.gov/WH/New/html/20000308_3.html (last visited Mar. 8, 2000). (This ensures that the U.S. can take effective action in case of increased imports of a particular product from China that causes or threatens to cause or threaten to cause market disruption in the United States).

93. *See* SG Agreement, *supra* note 78 (recognizing the need to enhance rather than limit competition in international markets).

94. *See* USTR on China WTO Accession before Senate Finance Committee (Urges support for permanent Normal Trade Relations), at <http://www.usinfo.state.gov/regional/ea/uschina/barsh223.html> (last visited Nov. 21, 2000).

uct/producer, and therefore the enactment of a safeguard is not allowed to save the industry.⁹⁵

In addition, much of the foreign imports flooding the Chinese market will be at already agreed upon levels.⁹⁶ Therefore, it is highly unlikely that the safeguard measures enacted by the regional officials to save a local industry would survive the investigation mandated by the SG.⁹⁷

Assuming *arguendo* that the safeguard is found to be warranted by the investigation, the Member must maintain a substantially equivalent level of concessions and other obligations⁹⁸ with respect to affected Members.⁹⁹ This aspect of the SG also poses a significant problem to China, and threatens their ability to comply with the mandated regulations.¹⁰⁰ Without a strong central authority to decide which concession to grant, one local official will not be able to make another local official accept the mandated concessions.¹⁰¹ The result would be a safeguard measure applied without an equivalent concession, and therefore a violation of WTO standards.¹⁰²

III. AUTO INDUSTRY

The above-mentioned protectionist policies and the problems they create under the WTO can be seen through an examination of the Chinese auto industry. The potential for China's auto market is the largest in the world, but the market is also highly protected by tariffs and non-tariff related policies.¹⁰³ Therefore, the WTO agreement between China and the United States calls for Beijing to make drastic cuts in tariffs by 2006, with the largest cuts in the first years after accession.¹⁰⁴

In 1992, China's automotive industry employed 1.85 million people and was a tremendous source of the country's revenue.¹⁰⁵ Nonetheless, China's auto industry is still highly inefficient and not fully capable of competing in the international arena.¹⁰⁶ Consequently, the auto industry will be under a

95. See generally, *supra* note 88.

96. See *id.*

97. See, e.g., SG Agreement, *supra* note 78, at art. IV.

98. See *id.* at art. VIII. Any adequate means of trade compensation may be agreed with the affected Members.

99. See *id.*; see also WTO: *Trade Topics; The Agreement on Safeguards*, *supra* note 82. Absent such agreement, the affected exporting Members individually may suspend substantially equivalent concessions and other obligations.

100. See generally May, *supra* note 3 (stating that China is not really one market but a collection of small markets).

101. See *supra* note 31 and accompanying text.

102. See SG Agreement, *supra* note 78.

103. See *Top Chinese Trade Official Says WTO Will Challenge China's Auto Industry*, at <http://www.chinaonline.com/industry/automotive/NewsArchive/Secure/199.../B2-99120622.as.htm> (last visited Nov. 11, 2000).

104. See May, *supra* note 3.

105. See *Top Chinese Trade Official Says WTO Will Challenge China's Auto Industry*, *supra* note 103.

106. See *id.*

great deal of pressure from the tariff decreases and from the loosening of non-tariff related policies that are mandated by the WTO agreement.¹⁰⁷ Therefore, provincial leaders may seek to protect their auto industry through the use of local protectionist policies.¹⁰⁸

The protectionist policies that local officials will use are identical to the policies outlined in the previous section, and both will violate the WTO agreements discussed above.¹⁰⁹ First, the official will offer subsidies to the local car manufacturers, followed shortly by raising tariffs in order to make the price of the foreign autos less attractive than the domestically manufactured auto.¹¹⁰

If the local factories falter and go bankrupt, the province would incur a massive amount of unemployment and political unrest.¹¹¹ In order to prevent the factory from going under, the local officials will attempt to give them every advantage available.¹¹² The words of a Chinese businessman attempting to gain a contract in another Chinese province exemplify how often this occurs.¹¹³ One businessman stated, "When a local enterprise is desperate for orders, the local government will naturally give it priority when there is competition from outside companies."¹¹⁴ He went on to say, "Sometimes, we are banned from participating in a bid at all."¹¹⁵

The Chinese auto market is one of the best examples of local protectionism occurring in China today.¹¹⁶ It is here that one can see the continued use of the previously mentioned prohibited specific subsidy.¹¹⁷ Provincial officials continually favor the purchase of locally manufactured autos over autos produced outside their province.¹¹⁸ This is why nearly every taxi in Shanghai is made by the joint venture Shanghai Volkswagen.¹¹⁹ Such an occurrence under the WTO is tantamount to the government conferring a prohibited spe-

107. *See id.*

108. *See generally* May, *supra* note 3 (observing that China's auto market is one of the best examples of localized protection).

109. *See generally id.* (stating that provincial and city officials naturally favor local car manufacturers, and that many local governments impose extra fees and taxes on non-local cars).

110. *See id.* and accompanying text.

111. *See generally* May, *supra* note 3 (stating local officials who will have to deal with protests by angry laid-off workers); *see generally* Top Chinese Trade Official Says WTO Will Challenge China's Auto Industry, *supra* note 103 (stating China's auto industry employed 1.85 million people).

112. *See generally* May, *supra* note 3 (stating local officials will try to protect regional manufacturing).

113. *See* Trish Saywell, *China's City Limits*, (quoting the president of Baosteel Business Development Co., Sun Dipeng), at http://www.feer.com/9910_14/p58economies.html (last visited Nov. 21, 2000).

114. *See id.*

115. *See* *China's City Limits*, *supra* note 113.

116. *See* May, *supra* note 3 (discussing the deal's highlight to reduce tariffs on foreign autos).

117. *See* SCM Agreement, *supra* note 50.

118. *See* May, *supra* note 3.

119. *See id.*

cific subsidy, and therefore, a serious violation of WTO regulations.¹²⁰ While these problems, until now, were primarily those of Chinese manufacturers, it is almost certain that foreign companies will face the same obstacles.¹²¹

Furthermore, as stated above, the local officials may seek to raise tariffs to make the price of the locally produced cars more attractive than foreign cars.¹²² This is equivalent to invoking a safeguard measure as provided under the SG.¹²³ However, the SG offers China no remedy in the situation of its auto market. Indeed, the Chinese markets are going to be flooded with cheaper, more effective foreign cars, but only at a level already agreed upon at WTO accession.¹²⁴ Therefore, it is nearly impossible to imagine that an investigation initiated by China under the SG would end in their favor and a safeguard would be allowed by the WTO.¹²⁵ As a result, any attempt by a local official to raise tariffs to protect their auto plants will violate the WTO regulations. This type of violation is, at the time of this writing, very common in the Chinese auto market.¹²⁶ Local governments continually impose extra fees and taxes on non-local cars and in some cases drive the price of foreign cars up by half.¹²⁷ Upon WTO accession, the competition in the Chinese auto industry will increase, making it certain that this practice will continue and be applied against foreign businesses.¹²⁸

IV. SOLUTIONS

Despite the inevitable compliance problems China will face, it is in the United States and the world's interest to continually engage China and help them fully comply with the WTO agreements. The United States can seek to rectify the problem in two distinct ways. The first is a short-term solution that allows the United States to protect its trade by using the dispute settlement

120. See SCM Agreement, *supra* note 50.

121. See May, *supra* note 3 (observing until now this has primarily been a problem for Chinese and joint-venture manufactures, but foreign car companies will likely encounter similar barriers for their imports even as China's national tariff level drops).

122. See generally Paul Mooney, *Historic Heroic: Beijing Jeep Rolls Out SUV*, at <http://www.chinaonline.com/industry/automotive/NewsArchive/Secure/2000/. . . /c00059050.as> (last modified June 13, 2000). The analyst states the Heroic would not immediately be affected by competition spurred by China's WTO entry, saying the government would use trade barriers to discourage any surge in imports that could threaten the local auto industry.

123. See WTO: *Trade Topics; The Agreement on Safeguards*, *supra* note 82.

124. See generally May, *supra* note 3 (noting "[a] highlight of the deal is China's pledge to reduce its tariffs on foreign autos from the current 80-100 percent level to just 25 percent in 2006").

125. See WTO: *Trade Topics; The Agreement on Safeguards*, *supra* note 82.

126. See May, *supra* note 3.

127. See *id.*

128. See generally *id.* (stating that until now it has been the problem for Chinese manufactures, but foreign car companies will encounter similar barriers); see also *Top Chinese Trade Official Says WTO Will Challenge China's Auto Industry*, *supra* note 103 (stating China's auto industry is still weak in its ability to compete internationally).

procedures set up by the WTO.¹²⁹ The second is a long-term solution that will help Beijing regain control of its economic policies and transform China into a fully compliant WTO Member.¹³⁰

A. *Short-Term Solution to Non-Compliance*

First, the WTO has a fully functioning dispute resolution body ("DRB").¹³¹ The DRB is charged with seeking positive, mutually acceptable solutions for problems arising out of international trade.¹³² Using this process,¹³³ the United States could effectively bring its complaint to the WTO and have the dispute settled.¹³⁴ The DRB sets strict timetables for Members to answer complaints and will monitor their compliance after the dispute is settled.¹³⁵ This process offers the United States a fast, short-term solution to China's non-compliance.¹³⁶

B. *Long-Term Solution to Non-Compliance*

Additionally, the United States must seek to develop a long-term strategy to help develop China into a fully compliant WTO Member.¹³⁷ The development of many state-run institutions, in effect a larger central government, can facilitate this goal.¹³⁸ While the creation of new and larger federal agencies is not a popular aspect of the United States government, it is, nonetheless, an essential part of its ability to implement policies.¹³⁹ The United States institu-

129. See Mota, *supra* note 10.

130. See May, *supra* note 3 (observing that "[o]vercoming this problem will take great effort by the Chinese authorities and the United States should do what it can in terms of expertise and financial resources to help Beijing eliminate local protectionism").

131. See Mota, *supra* note 10, at 77.

132. *Id.*

133. See *id.* at 78.

A dispute resolution begins when a WTO member requests a consultation with the DRB and other relevant committees. Any other involved member(s) must enter into the consultation in good faith. These consultations are confidential. If a dispute is not resolved within sixty days after a request for consultation, the member bringing a complaint may submit a written request for a panel. The parties may voluntarily undertake other good offices, conciliation, or mediation, which may continue even while a panel proceeds.

134. See *id.* at 77.

135. See *id.* at 78.

136. See generally *id.* at 80 ("The Agreement establishing the WTO states that prompt compliance with recommendations or rulings of the DSB is 'essential to ensure effective resolution of disputes.' If an offending party fails to implement a ruling, the WTO may request voluntary compensation from, and/or temporarily suspend concessions that benefit that party.").

137. See May, *supra* note 3 (observing that "U.S. support for programs to train Chinese judges, to strengthen central oversight of government contracts, and even establish a special 'WTO compliance center' in Beijing to monitor local governments would serve American, as well as Chinese, interests").

138. See generally Thomas L. Friedman, Editorial, *I Love D.C.*, N.Y. TIMES, Nov. 7, 2000, at A29 ("Do you know what the average Chinese would give to have a capital like Washington today, with its reasonably honest and efficient bureaucracy?").

139. See *id.*

tions, its courts, its bureaucracy, and its regulatory agencies make it the envy of the world, and explain its success in the economic arena.¹⁴⁰ The United States must work closely with China to help develop such institutions. China must re-centralization its banks, its courts,¹⁴¹ and most importantly, it must expand its regulatory agencies.¹⁴²

The development of many regulatory agencies within the twenty-three provinces will help place pressure on the local provincial leaders and thereby ensure greater WTO compliance.¹⁴³ Perhaps the most important institution the United States could help establish is a Beijing WTO compliance center. This institution would bring the United States and China together and facilitate communication and cooperation.

V. CONCLUSION

China will certainly have severe problems in complying with WTO regulations.¹⁴⁴ Due to the years of rapid decentralization, Beijing places the fate of its international trade in the hands of its provincial officials.¹⁴⁵ However, the seemingly insurmountable obstacles facing the local officials leave them with only one possible course of action, a course of action that will inevitably lead to violations of the WTO and strain the Sino-American trade relationship.¹⁴⁶

Indeed, had Mr. Bush actually traveled abroad more than twice he would have discovered that what foreigners envy us most for is precisely: Washington. That is, our institutions, our courts, our bureaucracy, our military, and our regulatory agencies—the S.E.C., the federal Reserve, the F.A.A., the F.D.A., the F.B.I., the E.P.A., the I.R.S., the I.N.S., the U.S. Patent Office and the Federal Emergency Management Agency.

But it is precisely the quality of our government institutions that creates the framework for that entrepreneurship to flourish.

140. See *id.* ("His repeated denigration of Washington and government in general manifests a profound ignorance of what makes America unique in the world today—which happens to be the strength, quality and, yes, breadth of our government."); see also *supra* note 81 and accompanying text.

141. See May, *supra* note 3, at 3. "The strengthening of the rule of law is crucial for China's integration into the world trading system but, again, Beijing's lack of control is a cause for concern. Prosecutors and judges overwhelmingly favor companies in their district." These biases in China's legal system will become more prevalent as trade increase because of WTO membership. "An American bank that will be allowed to conduct business in China may find it has nowhere to turn when a Chinese company defaults on a loan." Therefore it is imperative that China restructure and reinforce the legitimacy and power of its court system.

142. See *id.* (stating it is important that China revamp its regulatory agencies, because along with decentralization, there are also many other obstacles to China's compliance with WTO standards). The other obstacles include "rampant corruption, smuggling, bid rigging, and theft of intellectual property, [which all] can be traced to the erosion of central government authority and local Communist Party leaders protecting their own financial interests at the expense of national policy goals."

143. See generally *supra* notes 135-138 and accompanying text.

144. See May, *supra* note 3, at 1.

145. See *supra* note 5.

146. See, e.g., *id.*; see *supra* notes 7-8.

Still, it is in the best interest of the world, and in particular the United States, that China continually be engaged and assisted in its compliance with the WTO standards.¹⁴⁷ Through the use of the DRB and through the development of a joint WTO compliance center, the United States can effectively protect its trade and craft China into a fully compliant Member.¹⁴⁸ Then, the access and utilization of the Chinese market sought by the West throughout history will finally come to fruition.

Gregory Fennell

147. See May, *supra* note 3 ("In short, China's integration into WTO is too important to let it be undermined by rapacious and/or protectionist local cadres.").

148. See *supra* note 11.